

## Part III. Administrative, Procedural, and Miscellaneous

### **FBAR Filing Requirements — Administrative Relief For Persons Having Signature Authority Over, But No Financial Interest In, A Foreign Financial Account, And For Persons With A Financial Interest In, Or Signature Authority Over, Certain Foreign Commingled Funds**

#### **Notice 2010-23**

This notice provides administrative relief to certain persons who may be required to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (FBAR), for calendar year 2009 and earlier calendar years.

On August 31, 2009, the Internal Revenue Service published Notice 2009-62, 2009-35 I.R.B. 260, which extended the filing deadline for (i) persons with no financial interest in a foreign financial account but with signature or other authority over that account (hereinafter referred to as “signature authority”); and (ii) persons with a financial interest in, or signature authority over, a foreign financial account in which the assets are held in a commingled fund (hereinafter referred to as “foreign commingled funds”). This extension was provided in order for the Treasury Department to have the time necessary to develop comprehensive FBAR guidance.

To assist in the development of comprehensive FBAR guidance, Notice 2009-62 also requested public comments regarding a person’s FBAR filing obligation, including (i) when a person with signature authority over, but no financial interest in, a foreign financial account should be relieved of filing an FBAR for that account; (ii) whether the exception from FBAR fil-

ing available for officers and employees of banks and certain publicly-traded domestic companies should be expanded; (iii) when an interest in a foreign entity should be subject to FBAR reporting; and (iv) whether a United States person should be relieved from an FBAR filing requirement with respect to a foreign commingled fund in other circumstances, such as when filing would be duplicative of other reporting.

Since the issuance of Notice 2009-62, and receipt of a significant number of public comments, the Treasury Department has published proposed FBAR regulations under 31 CFR Part 103, as well as proposed revisions that clarify instructions for the FBAR (Form TD F 90-22.1). To provide taxpayers with guidance on who is required to file FBARs due on June 30, 2010, and in particular to provide immediate guidance to taxpayers on how to answer FBAR-related 2009 federal income tax return questions (*e.g.*, Schedule B of Form 1040, the “Other Information” section of Form 1041, Schedule B of Form 1065, and Schedule N of Form 1120), the IRS and Treasury Department believe it is appropriate to provide the following administrative relief:

#### **1. Signature Authority.**

Persons with signature authority over, but no financial interest in, a foreign financial account for which an FBAR would otherwise have been due on June 30, 2010, will now have until June 30, 2011, to report those foreign financial accounts. The deadline of June 30, 2011, applies to FBARs reporting foreign financial accounts over which the person has signature authority, but no financial interest, for the 2010 and prior calendar years. When completing an FBAR that is subject to the extension provided in this paragraph, persons must adhere to FBAR guidance in effect at the time the FBAR is filed.

#### **2. Certain Foreign Commingled Funds.**

Persons with a financial interest in, or signature authority over, a foreign commingled fund that is a mutual fund are required to file an FBAR unless another filing exception, as provided in the FBAR instructions or other relevant guidance, applies. The IRS will not interpret the term “commingled fund” as applying to funds other than mutual funds with respect to FBARs for calendar year 2009 and prior years. Thus, the IRS has determined that it will not apply its enforcement authority adversely in the case of persons with a financial interest in, or signature authority over, any other foreign commingled fund with respect to that account for calendar year 2009 and earlier calendar years. A financial interest in, or signature authority over, a foreign hedge fund or private equity fund is included in the administrative relief provided in the preceding sentence.

#### **3. FBAR-Related Questions on Federal Tax Forms.**

Provided the taxpayer has no other reportable foreign financial accounts for the year in question, a taxpayer who qualifies for the filing relief provided in this notice should check the “no” box in response to FBAR-related questions found on federal tax forms for 2009 and earlier years that ask about the existence of a financial interest in, or signature authority over, a foreign financial account.

#### **EFFECT ON OTHER DOCUMENTS**

Notice 2009-62 is modified and supplemented.

The principal author of this notice is Mark E. Cottrell of the Office of Associate Chief Counsel (Procedure and Administration). For further information regarding this notice, contact Emily M. Lesniak at (202) 622-4940 (not a toll-free call).